

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

Anthony Moore,)	
)	
Plaintiff,)	ORDER ADOPTING REPORT AND
)	RECOMMENDATION
vs.)	
)	
Leann Bertsch, Timothy Schuetzle,)	Case No. 1:09-cv-027
Shaun Fode, Wade Strand, Deven Hiasg,)	
Kathleen Bachmeier, John J. Hagan,)	
Robert Heier, and Jason Braggee, in their)	
individual and official capacities,)	
)	
Defendants.)	

Before the Court is plaintiff Anthony Moore’s application to proceed in forma pauperis, motion to reassign the case, and motion to disqualify judges filed on June 15, 2009. See Docket Nos. 4, 6, 9, and 10. Moore raises a myriad of claims in his complaint. Moore alleges that he is in “imminent danger of serious physical injury by remaining in administrative segregation because of excruciating lower back pain in spinal column, tremendous pain in right foot, calf and upper inner and outer thigh areas and atrophy;” North Dakota State Penitentiary (NDSP) employees and officials have opened his legal mail on two occasions outside of his presence; NDSP employees and officials have deprived him of due process by failing to adjudicate a Class B infraction report within 7 working days as required by NDSP policy; NDSP employees and officials have violated his due process rights by finding him guilty of two Class B infractions without evidence to support the convictions; NDSP employees and officials have unconstitutionally retaliated against him for filing a complaint against an NDSP employee to the National Center for Missing and Exploited Children; and NDSP employees and officials have acted with deliberate indifference to his serious medical needs by refusing to diagnose and treat him for alleged excruciating pain in his right foot, calf, upper

inner and outer thigh areas, and lower spinal column. Moore seeks to disqualify all of the federal judges of the District of North Dakota from hearing this case. Moore contends that he will not receive a fair ruling if any of the judges in this district preside over the action.

On July 1, 2009, Magistrate Judge Charles S. Miller, Jr. issued a Report and Recommendation in which he recommended that Moore's application to proceed in forma pauperis be denied, that Moore's motions seeking disqualification of judges and reassignment be denied, and that Moore's action be dismissed without prejudice. See Docket No. 16. The parties were given ten (10) days to file objections to the Report and Recommendation. Moore filed an objection on July 8, 2009. See Docket No. 19.

Moore contends that he has named Judge Miller as a defendant in this matter and, therefore, Judge Miller may not issue a ruling in this case. Moore states,

Magistrate Charles Miller is such a idiot for he has ruled on a matter that he is a defendant in, see the plaintiff's complaint paragraph 8 page 7. None of the judges named can participate in the matter-at-hand it is just so stupid and biased to even do such an illegal act, the plaintiff request that an Federal judge that is not a defendant in the pending case vacate Mr. Miller's partial Report and Recommendation and an screening be conducted by a Federal judge that is not a defendant in the pending case.

See Docket No. 19 (errors in original).

The Court finds that Moore has not named Judge Miller or any federal judge from the District of North Dakota as a defendant in the pending action. In the caption of his complaint, Moore names the following individuals as defendants: Leann Bertsch, Timothy Schuetzle, Shaun Fode, Wade Strand, Deven Hiasg, Kathleen Bachmeier, John J. Hagan, Robert Heier, and Jason Braggee, to be sued in their individual and official capacities. See Docket No. 5. On page 7, paragraph 8, of the complaint, Moore states,

The plaintiff will not receive a fair ruling and due process if the complaint is presented to Magistrate Alice Senechal Charles Miller Karen Klein, Judges Ralph

Erickson, Rodney Webb Patrick Comney. Daniel Hovland the plaintiff request that it be not, the aforesaid mentioned Federal Judges have also previously ruled on matters whereas they did not have jurisdiction.

See Docket No. 5 (errors in original). The Court finds that paragraph 8 states Moore's desire to disqualify all of the federal judges of the District of North Dakota from presiding over the action, and does not indicate an intent to name the federal judges as defendants in the action.

The Court has carefully reviewed the Report and Recommendation, relevant case law, Moore's objection, and the entire record, and finds the Report and Recommendation to be persuasive. The Court **ADOPTS** the Report and Recommendation (Docket No. 16) in its entirety and **DENIES** Moore's application to proceed in forma pauperis (Docket Nos. 4 and 9), **DENIES** Moore's motion to reassign the case and motion to disqualify all of the federal judges (Docket Nos. 6 and 10), and **DISMISSES** the complaint **WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Dated this 13th day of July, 2009.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court